

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 12, 2012

Elisabeth A. Shumaker
Clerk of Court

In re:

JASON ARON PRESLEY,

Petitioner.

No. 12-4192
(D.C. No. 2:12-CV-00813-TS)
(D. Utah)

ORDER

Before **BRISCOE**, Chief Judge, **GORSUCH** and **HOLMES**, Circuit Judges.

Jason Aron Presley, also known as Ernie John Young, seeks a writ of mandamus directed to the Honorable Ted Stewart to compel Judge Stewart to take unspecified action with regard to a complaint that Mr. Presley previously filed in the United States District Court for the District of Utah. *Young v. FBI*, No. 2: 12-cv-00813-TS. The complaint has been dismissed, and final judgment has recently entered in the referenced action. “The extraordinary relief of a writ of mandamus is not a substitute for an appeal, and it is not a vehicle to relieve persons of the consequences of their . . . decision not to pursue available procedures and remedies.” *Weston v. Mann (In re Weston)*, 18 F.3d 860, 864 (10th Cir. 1994).

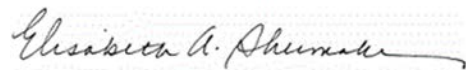
Mr. Presley also requests appointment of a grand jury to bring criminal proceedings against certain respondents named in his petition. As we have previously admonished him, such an order would improperly intrude upon the

separation of powers. “Broad [prosecutorial] discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review.” *Presley v. Presley*, 102 F. App’x 636, 636 (10th Cir. 2004) (quoting *Wayte v. United States*, 470 U.S. 598, 607 (1985)).

Mr. Presley also seeks injunctive relief or a stay to provide him with (1) “[c]riminal disclosure,” (2) DNA testing, and (3) injunctive relief against a competency evaluation in state court. Motion for Stay or Injunction, at 11. In order to receive injunctive relief or a stay, Mr. Presley must show “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction [or stay] is in the public interest.” *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008); *see also* 10th Cir. R. 8.1. Mr. Presley fails to demonstrate his entitlement to injunctive relief or a stay under these factors.

The requests for mandamus relief and for a stay or injunction are denied. Mr. Presley’s motion to proceed in forma pauperis is granted.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", written in black ink on a light-colored background.

ELISABETH A. SHUMAKER, Clerk